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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/809,641	03/25/2004	Bryan L. Dalton	LM(F)6509 NP	7720
26294	7590	10/10/2006	EXAMINER	
TAROLLI, SUNDHEIM, COVELL & TUMMINO L.L.P. 1300 EAST NINTH STREET, SUITE 1700 CLEVEVLAND, OH 44114			WENDELL, ANDREW	
			ART UNIT	PAPER NUMBER
			2618	

DATE MAILED: 10/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/809,641	DALTON ET AL.	
	Examiner Andrew Wendell	Art Unit 2618	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 25 March 2004.
- 2a) This action is **FINAL**.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-20 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-20 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) Notice of Informal Patent Application
- 6) Other: \_\_\_\_\_

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 101***

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 16-20 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claims 16-20 are drawn to a “program” per se as recited in the preamble and as such is non-statutory subject matter. See MPEP 2106.IV.B.1.a. Data structures not claimed as embodied in computer readable media are descriptive material per se and are not statutory because they are not capable of causing functional change in the computer. See, e.g., Warmerdam, 33 F.3d at 1361, 31 USPQ2d at 1760 (claim to a data structure per se held nonstatutory). Such claimed data structures do not define any structural and functional interrelationships between the data structure and other claim aspects of the invention, which permit the data structure’s functionality to be realized. In contrast, a claimed computer readable medium encoded with a data structure defines structural and functional interrelationships between the data structure and the computer software and hardware components which permit the data structure’s functionality to be realized, and is thus statutory. Similarly, computer programs claimed as computer listings per se, i.e., the descriptions or expressions of the programs are not physical “things.” They are neither computer components nor statutory processes, as they are not “acts” being performed. Such claimed computer programs do not define any structural and functional interrelationships between the computer program and

other claimed elements of a computer, which permit the computer program's functionality to be realized.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-13 are rejected under 35 U.S.C. 102(e) as being anticipated by Tsutsumi et al. (US Pat# 2003/0078034).

Regarding claim 1, Tsutsumi's network device teaches a data concentrator computer 34 (Fig. 6); a gateway device 32 (Fig. 5) for communicating with the data concentrator computer 34 (Fig. 5); a first mobile data acquisition device 14 (Fig. 6) communicating with the gateway device 32 (Fig. 6); and a second mobile data acquisition device 12 (Fig. 6) communicating with the gateway device 32 (Fig. 6), the gateway device 32 (Fig. 6) allowing direct communication between the first 14 (Fig. 6) and second 12 (Fig. 6) mobile data acquisition devices without communication with the data concentrator computer 34 (Fig. 6).

Regarding claim 2, Tsutsumi teaches wherein the first mobile data acquisition device initiates an "Am I Alive?" transmission S1 (Fig. 4).

Regarding claim 3, Tsutsumi teaches wherein the first mobile data acquisition device sends a "Roll Call" request to the gateway device (Sections 0061-0065).

Regarding claim 4, Tsutsumi teaches wherein the gateway device broadcasts a "Please Identify" message to the second mobile data acquisition device (Sections 0061-0063).

Regarding claim 5, Tsutsumi teaches the second mobile data acquisition device transmits a device identification to the gateway device (Sections 0061-0063).

Regarding claim 6, Tsutsumi teaches wherein the gateway device transmits an identification of the second mobile data acquisition device (Sections 0061-0063).

Regarding claim 7, Tsutsumi teaches wherein the first mobile data acquisition device 14 (Fig. 5) communicates with the data concentrator computer 34 (Fig. 5) through the gateway device 32 (Fig. 5).

Regarding claim 8, Tsutsumi teaches wherein the data concentrator computer sends a "Please Identify" message to the gateway device (Sections 0054-0057).

Regarding claim 9, Tsutsumi teaches wherein the first mobile data acquisition device indicates that "Roll Call" data is available (Sections 0061-0065).

Regarding claim 10, Tsutsumi teaches wherein the data concentrator computer sends a "Send Roll Call" request to the first mobile data acquisition device through the gateway device (Sections 0054-0057).

Regarding claim 11, Tsutsumi teaches a data concentrator computer 34 (Fig. 5); a mailbox 32 (Fig. 5) for communicating with the data concentrator computer 34 (Fig. 5); a first mobile data 14 (Fig. 6) acquisition device communicating with the mailbox 32

(Fig. 6); and a second mobile data acquisition device 12 (Fig. 6) communicating with the mailbox 32 (Fig. 6), the mailbox 32 (Fig. 6) allowing peer to peer communication between the first 14 (Fig. 6) and second 12 (Fig. 6) mobile data acquisition devices without communication with the data concentrator computer 34 (Fig. 6).

Regarding claim 12, Tsutsumi teaches wherein the mailbox maintains Roll Call Data for the first and second mobile data acquisition devices (Sections 0061-0065).

Regarding claim 13, Tsutsumi teaches wherein the mailbox services a Roll Call of the first and second mobile data acquisition devices (Sections 0061-0065).

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 14 and 16-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tsutsumi et al. (US Pat# 2003/0078034) in view of Dorenbosch et al. (US Pat# 2003/0235184).

Regarding claim 14, Tsutsumi's network device teaches the limitations in claim 11. Tsutsumi fails to teach a third mobile data acquisition device.

Dorenbosch's apparatus for multi-participant communication session teaches a third mobile data acquisition device 113 (Fig. 1) for communicating peer to peer with the first mobile data acquisition device 111 (Fig. 1).

Therefore, it would have been obvious at the time of the invention to one of ordinary skill in the art at the time the invention was made to incorporate a third mobile data acquisition device as taught by Dorenbosch into Tsutsumi's network device in order to provide a high-speed floor control with minimum delay (Sections 0005 and 0011).

Regarding claim 16, Tsutsumi teaches a first instruction for activating a first mobile device S1 (Fig. 5); a second instruction for requesting a roll call from a gateway device by the first mobile device S2-S3 (Fig. 5); a third instruction for broadcasting a please identify message to a second mobile device S4 (Fig. 5); and a fourth instruction for providing peer to peer communication between the first mobile device 14 (Fig. 6) and the second devices 12 (Fig. 6). Tsutsumi fails to teach a third mobile device.

Dorenbosch teaches providing peer to peer communication between the first mobile device 111 (Fig. 1) and the second 112 (Fig. 1) and third mobile 113 (Fig. 1) devices.

Regarding claim 17, the combination including Dorenbosch teaches for adding device identification data for the second and third mobile devices to a mailbox (Fig. 1, it is obvious the mobile devices send identification before connection).

Regarding claim 18, the combination including Tsutsumi teaches a sixth instruction for generating a history log of parsed roll call data by a data concentrator computer 34 (Fig. 5, Sections 0054-0057).

Regarding claim 19, the combination including Dorenbosch teaches a seventh instruction for transmitting identification data to the gateway device by the second 112 (Fig. 1) and third mobile device 113 (Fig. 1) and a fourth mobile device 114 (Fig. 1).

Regarding claim 20, the combination including Tsutsumi teaches an eighth instruction for transmitting a "Please Identify" message from the data concentrator computer to the first mobile device through the gateway device (Sections 0061-0065).

6. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tsutsumi et al. (US Pat# 2003/0078034) in view of Mercer (US Pat# 2004/0198322).

Regarding claim 15, Tsutsumi's network device teaches the limitations in claim 11. Tsutsumi fails to teach a timestamp.

Mercer's system for session management of short message service enabled applications wherein the mailbox generates a Last Roll Call Timestamp (Sections 0006-0007 and 0072-0073).

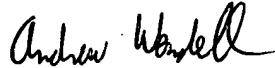
Therefore, it would have been obvious at the time of the invention to one of ordinary skill in the art at the time the invention was made to incorporate a timestamp as taught by Mercer into Tsutsumi's network device in order to reduce time for the user (Section 0003).

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrew Wendell whose telephone number is 571-272-0557. The examiner can normally be reached on 7:30-5 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nay Maung can be reached on 571-272-7882. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Andrew Wendell  
Examiner  
Art Unit 2618

9/29/2006

 10/02/06  
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PRIMARY EXAMINER